

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 LORRAINE C. ESTRADA,) NO. EDCV 09-0071-RC
12 Plaintiff,)
13 v.) OPINION AND ORDER
14 MICHAEL J. ASTRUE,)
Commissioner of Social Security,)
15 Defendant.)
16 _____)

18 Plaintiff Lorraine C. Estrada filed a complaint on January 21,
19 2009, seeking review of the Commissioner's decision denying her
20 applications for disability benefits. On June 9, 2009, the
21 Commissioner answered the complaint, and the parties filed a joint
22 stipulation on July 27, 2009.

BACKGROUND

On July 6, 2006, plaintiff, who was born on July 21, 1964, applied for disability benefits under Title II of the Social Security Act ("Act"), 42 U.S.C. § 423, and the Supplemental Security Income program ("SSI") of Title XVI of the Act, claiming an inability to work

1 since May 16, 2006, due to stress, anxiety, depression and partial
 2 hearing loss. Certified Administrative Record ("A.R.") 94-103, 111.
 3 The plaintiff's applications were initially denied on November 1,
 4 2006, and were denied again on July 20, 2007, following
 5 reconsideration. A.R. 49-55, 58-62. The plaintiff then requested an
 6 administrative hearing, which was held before Administrative Law Judge
 7 Jay E. Levine ("the ALJ") on August 26, 2008. A.R. 21-44, 64. On
 8 September 26, 2008, the ALJ issued a decision finding plaintiff is not
 9 disabled. A.R. 5-20. The plaintiff appealed this decision to the
 10 Appeals Council, which denied review on November 10, 2008. A.R. 1-4.

11

12 DISCUSSION

13 I

14 The Court, pursuant to 42 U.S.C. § 405(g), has the authority to
 15 review the decision denying plaintiff disability benefits to determine
 16 if his findings are supported by substantial evidence and whether the
 17 Commissioner used the proper legal standards in reaching his decision.
 18 Vasquez v. Astrue, 572 F.3d 586, 591 (9th Cir. 2009); Yernoff v.
 19 Astrue, 568 F.3d 1102, 1105 (9th Cir. 2009). "In determining whether
 20 the Commissioner's findings are supported by substantial evidence,
 21 [this Court] must review the administrative record as a whole,
 22 weighing both the evidence that supports and the evidence that
 23 detracts from the Commissioner's conclusion." Reddick v. Chater, 157
 24 F.3d 715, 720 (9th Cir. 1998); Holohan v. Massanari, 246 F.3d 1195,
 25 1201 (9th Cir. 2001). "Where the evidence can reasonably support
 26 either affirming or reversing the decision, [this Court] may not
 27 substitute [its] judgment for that of the Commissioner." Parra v.
 28 Astrue, 481 F.3d 742, 746 (9th Cir. 2007), cert. denied, 552 U.S. 1141

1 (2008); Vasquez, 572 F.3d at 591.

2
3 The claimant is "disabled" for the purpose of receiving benefits
4 under the Act if she is unable to engage in any substantial gainful
5 activity due to an impairment which has lasted, or is expected to
6 last, for a continuous period of at least twelve months. 42 U.S.C.
7 §§ 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505(a), 416.905(a).
8 "The claimant bears the burden of establishing a *prima facie* case of
9 disability." Roberts v. Shalala, 66 F.3d 179, 182 (9th Cir. 1995),
10 cert. denied, 517 U.S. 1122 (1996); Smolen v. Chater, 80 F.3d 1273,
11 1289 (9th Cir. 1996).

12
13 The Commissioner has promulgated regulations establishing a five-
14 step sequential evaluation process for the ALJ to follow in a
15 disability case. 20 C.F.R. §§ 404.1520, 416.920. In the **First Step**,
16 the ALJ must determine whether the claimant is currently engaged in
17 substantial gainful activity. 20 C.F.R. §§ 404.1520(b), 416.920(b).
18 If not, in the **Second Step**, the ALJ must determine whether the
19 claimant has a severe impairment or combination of impairments
20 significantly limiting her from performing basic work activities. 20
C.F.R. §§ 404.1520(c), 416.920(c). If so, in the **Third Step**, the ALJ
22 must determine whether the claimant has an impairment or combination
23 of impairments that meets or equals the requirements of the Listing of
24 Impairments ("Listing"), 20 C.F.R. § 404, Subpart P, App. 1. 20
C.F.R. §§ 404.1520(d), 416.920(d). If not, in the **Fourth Step**, the
26 ALJ must determine whether the claimant has sufficient residual
27 functional capacity despite the impairment or various limitations to
28 perform her past work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If not,

1 in **Step Five**, the burden shifts to the Commissioner to show the
 2 claimant can perform other work that exists in significant numbers in
 3 the national economy. 20 C.F.R. §§ 404.1520(g), 416.920(g).
 4 Moreover, where there is evidence of a mental impairment that may
 5 prevent a claimant from working, the Commissioner has supplemented the
 6 five-step sequential evaluation process with additional regulations
 7 addressing mental impairments.¹ Maier v. Comm'r of the Soc. Sec.
 8 Admin., 154 F.3d 913, 914-15 (9th Cir. 1998) (per curiam).

9
 10 Applying the five-step sequential evaluation process, the ALJ
 11 found plaintiff has not engaged in substantial gainful activity since
 12 her alleged onset date of May 16, 2006. (Step One). The ALJ then
 13 found plaintiff has the severe impairments of: depression, drug and
 14 alcohol abuse, in remission per the [plaintiff], hearing loss, and
 15

16 ¹ First, the ALJ must determine the presence or absence of
 17 certain medical findings relevant to the ability to work. 20
 18 C.F.R. §§ 404.1520a(b)(1), 416.920a(b)(1). Second, when the
 19 claimant establishes these medical findings, the ALJ must rate
 20 the degree of functional loss resulting from the impairment by
 21 considering four areas of function: (a) activities of daily
 22 living; (b) social functioning; (c) concentration, persistence,
 23 or pace; and (d) episodes of decompensation. 20 C.F.R.
 24 §§ 404.1520a(c)(2-4), 416.920a(c)(2-4). Third, after rating the
 25 degree of loss, the ALJ must determine whether the claimant has a
 26 severe mental impairment. 20 C.F.R. §§ 404.1520a(d),
 27 416.920a(d). Fourth, when a mental impairment is found to be
 28 severe, the ALJ must determine if it meets or equals a Listing.
 20 C.F.R. §§ 404.1520a(d)(2), 416.920a(d)(2). Finally, if a
 Listing is not met, the ALJ must then perform a residual
 functional capacity assessment, and the ALJ's decision "must
 incorporate the pertinent findings and conclusions" regarding the
 claimant's mental impairment, including "a specific finding as to
 the degree of limitation in each of the functional areas
 described in [§§ 404.1520a(c)(3), 416.920a(c)(3)]." 20 C.F.R.
 §§ 404.1520a(d)(3), (e)(2), 416.920a(d)(3), (e)(2).

1 occasional vertigo" (Step Two); however, she does not have an
2 impairment or combination of impairments that meets or equals a
3 Listing. (Step Three). Finally, the ALJ determined plaintiff is able
4 to perform her past relevant work; therefore, she is not disabled.
5 (Step Four).

6

7 **II**

8 A claimant's residual functional capacity ("RFC") is what she can
9 still do despite her physical, mental, nonexertional, and other
10 limitations. Mayes v. Massanari, 276 F.3d 453, 460 (9th Cir. 2001);
11 see also Valentine v. Comm'r, Soc. Sec. Admin., 574 F.3d 685, 689 (9th
12 Cir. 2009) (RFC is "a summary of what the claimant is capable of doing
13 (for example, how much weight he can lift)"). Here, the ALJ found
14 plaintiff has the RFC to perform work at any exertional level, but not
15 at unprotected heights, work requiring "acute hearing such as noises
16 and sounds[,] and "fast[-]paced work such as piece work or work that
17 is done on a conveyor belt." A.R. 11. However, plaintiff contends
18 the ALJ's RFC assessment is not supported by substantial evidence
19 because the ALJ improperly rejected the opinions of her treating
20 psychiatrists, Visit Chatsuthiphan, M.D.,² and Maria Salanga, M.D.,

21

22 ² The plaintiff was also examined by psychiatrist Linda M.
23 Smith, M.D., who initially examined her on October 12, 2006, and
24 diagnosed her with an adjustment disorder with mixed mood and
25 determined plaintiff's Global Assessment of Functioning ("GAF")
26 was 65, which indicates "[s]ome mild symptoms (e.g., depressed
27 mood and mild insomnia) or some difficulty in social,
28 occupational, or school functioning (e.g., occasional truancy, or
theft within the household), but generally functioning pretty
well, has some meaningful interpersonal relationships." American
Psychiatric Association, Diagnostic and Statistical Manual of
Mental Disorders, 34 (4th ed. (Text Revision) 2000)). A.R. 182-
88. Dr. Smith also found plaintiff "not altogether credible" and

1 and an examining audiologist, William W. Goral, M.D.

2
 3 The medical opinions of treating physicians are entitled to
 4 special weight because the treating physician "is employed to cure and
 5 has a greater opportunity to know and observe the patient as an
 6 individual." Sprague v. Bowen, 812 F.2d 1226, 1230 (9th Cir. 1987);
 7 Morgan v. Comm'r of the Soc. Sec. Admin., 169 F.3d 595, 600 (9th Cir.
 8 1999). Therefore, the ALJ must provide clear and convincing reasons
 9 for rejecting the uncontroverted opinion of a treating physician, Ryan
 10 v. Comm'r of Soc. Sec., 528 F.3d 1194, 1198 (9th Cir. 2008); Reddick,
 11 157 F.3d at 725, and "[e]ven if [a] treating doctor's opinion is
 12 contradicted by another doctor, the ALJ may not reject this opinion
 13 without providing 'specific and legitimate reasons' supported by
 14 substantial evidence in the record." Reddick, 157 F.3d at 725;
 15 Tommasetti v. Astrue, 533 F.3d 1035, 1041 (9th Cir. 2008). Similarly,
 16 "the ALJ may only reject . . . [an] examining physician's
 17 uncontradicted medical opinion based on 'clear and convincing
 18 reasons[,]' " Carmickle v. Comm'r, Soc. Sec. Admin., 533 F.3d 1155,
 19 1164 (9th Cir. 2008) (citation omitted); Widmark v. Barnhart, 454 F.3d
 20 1063, 1066 (9th Cir. 2006), and "[e]ven if contradicted by another

21
 22 "a fairly obvious positive responder" who "is probably not
 23 compliant with her medication." A.R. 182, 187. Dr. Smith did
 24 not find plaintiff has any "extreme," "marked" or "moderate"
 25 limitations and found she is "mildly" impaired in her ability to
 26 understand, remember or complete complex commands and in her
 27 ability to interact appropriately with supervisors, co-workers,
 28 or the public. A.R. 187. On April 17, 2007, Dr. Smith
 reexamined plaintiff and diagnosed her with an unspecified mood
 disorder and determined her GAF was 68. A.R. 252-58. Dr. Smith
 opined plaintiff "is possibly still noncompliant with her
 medication[,]" and again found no "extreme," "marked" or
 "moderate" limitations. A.R. 257-58.

1 doctor, the opinion of an examining doctor can be rejected only for
2 specific and legitimate reasons that are supported by substantial
3 evidence in the record." Regennitter v. Comm'r of the Soc. Sec.
4 Admin., 166 F.3d 1294, 1298-99 (9th Cir. 1999); Ryan, 528 F.3d at
5 1198.

6

7 **A. Dr. Chatsuthiphan:**

8 On December 4, 2007, treating psychiatrist Dr. Chatsuthiphan
9 evaluated plaintiff, noting her appearance, behavior, speech,
10 perceptual process, thought process, thought content and memory were
11 within normal limits, she was oriented to person, place, time and
12 situation, her insight and judgment were good, but her mood was
13 depressed; based on these findings, Dr. Chatsuthiphan diagnosed
14 plaintiff as having a bipolar disorder and alcohol and amphetamine
15 dependence and being depressed, and determined plaintiff's GAF was
16 42.³ A.R. 285-86, 298. On December 18, 2007, Dr. Chatsuthiphan
17 opined plaintiff has: an "extreme" limitation in her ability to
18 perform activities within a schedule, maintain regular attendance, and
19 be punctual within customary tolerances; and "marked" limitations in
20 her ability to remember locations and work-like procedures, maintain
21 attention and concentration for extended periods, accept instructions
22 and respond appropriately to criticism from supervisors, respond
23 appropriately to changes in the work setting, and set realistic goals

24

25 ³ A GAF of 41-50 means that the plaintiff exhibits
26 "[s]erious symptoms (e.g., suicidal ideation, severe obsessional
27 rituals, frequent shoplifting) or any serious impairment in
social, occupational, or school functioning (e.g. no friends,
unable to keep a job)." American Psychiatric Ass'n, Diagnostic
and Statistical Manual of Mental Disorders, 34 (4th ed. (Text
28 Revision) 2000).

1 or make plans independently of others. A.R. 302-03. Dr.
2 Chatsuthiphan also opined plaintiff would miss three or more days of
3 work each month due to her condition. A.R. 303.

4

5 On August 13, 2008, Dr. Chatsuthiphan opined plaintiff has:
6 "extreme" limitations in her ability to remember locations and work-
7 like procedures, understand and remember very short and simple
8 instructions, maintain attention and concentration for extended
9 periods, perform activities within a schedule, maintain regular
10 attendance, and be punctual within customary tolerances, sustain an
11 ordinary routine without special supervision, work in coordination
12 with or in proximity to others without being distracted by them, make
13 simple work-related decisions, interact appropriately with the general
14 public, ask simple questions or request assistance, accept
15 instructions and respond appropriately to criticism from supervisors,
16 get along with co-workers or peers without distracting them or
17 exhibiting behavioral extremes, respond appropriately to changes in
18 the work setting, and set realistic goals or make plans independently
19 of others; a "marked" limitation in her ability to be aware of normal
20 hazards and take appropriate precautions; a "moderate" limitation in
21 her ability to maintain socially appropriate behavior and adhere to
22 basic standards of neatness and cleanliness; and a "slight" limitation
23 in her ability to carry out very short and simple instructions. A.R.
24 321, 323. Dr. Chatsuthiphan again opined plaintiff would miss three
25 or more days of work each month due to her condition. A.R. 303.

26

27 The ALJ considered Dr. Chatsuthiphan's opinions, which are
28 contradicted by the opinions of Dr. Smith, Tommasetti, 533 F.3d at

1 1041; Reddick, 157 F.3d at 725, and concluded they were entitled to
 2 "minimal weight" for several reasons, including their inconsistency
 3 with Dr. Chatsuthiphhan's treating notes, which "support the finding
 4 that when the [plaintiff] takes her medication as prescribed, her
 5 condition is generally benign." A.R. 17. The ALJ's reasoning is
 6 supported by substantial evidence in the record, see A.R. 282-300,
 7 307-20, and provides a specific and legitimate reason for rejecting
 8 Dr. Chatsuthiphhan's opinions. Bayliss v. Barnhart, 427 F.3d 1211,
 9 1216 (9th Cir. 2005); Rollins v. Massanari, 261 F.3d 853, 856 (9th
 10 Cir. 2001).

11

12 The ALJ also rejected Dr. Chatsuthiphhan's opinions because they
 13 were "tendered without any supporting clinical or laboratory findings
 14 and [were] tendered on . . . check-box form[s] . . . [with] Dr.
 15 Chatsuthiphhan [making] absolutely no comments on either form regarding
 16 why he rated the [plaintiff] so low." A.R. 17. This reason also is
 17 supported by substantial evidence in the record, A.R. 302-03, 321,
 18 323, and constitutes a specific and legitimate reason for rejecting
 19 Dr. Chatsuthiphhan's opinions. See Batson v. Comm'r of the Soc. Sec.
 20 Admin., 359 F.3d 1190, 1195 (9th Cir. 2004) (ALJ properly rejected
 21 treating physicians' opinions in part because they were in checklist
 22 form with no supporting objective evidence); Crane v. Shalala, 76 F.3d
 23 251, 253 (9th Cir. 1996) ("ALJ . . . permissibly rejected
 24 [psychological evaluations] because they were check-off reports that
 25 did not contain any explanation of the bases of their conclusions.").

26

27 **B. Dr. Salanga:**

28 On January 13, 2007, Dr. Salanga examined plaintiff and diagnosed

1 her as having a severe recurrent major depressive disorder without
 2 psychotic features and determined plaintiff's GAF was 48. A.R. 227-
 3 28. Dr. Salanga found plaintiff was oriented to person, place, time
 4 and situation and her appearance, speech, perceptual process, thought
 5 process and thought content were within normal limits; however, she
 6 was withdrawn, her mood was depressed, her memory was impaired, and
 7 her insight and judgment were poor. A.R. 228.

8

9 The ALJ considered Dr. Salanga's medical records and opinions in
 10 determining plaintiff's RFC. A.R. 13. Nevertheless, plaintiff
 11 complains the ALJ did not properly consider Dr. Salanga's GAF score.
 12 Jt. Stip. at 3:9-4:26, 7:22-8:6. The Court disagrees. An ALJ is not
 13 required to give controlling weight to a treating physician's GAF
 14 score; indeed, an ALJ's failure to mention a GAF score does not render
 15 his assessment of a claimant's RFC deficient. See, e.g., Howard v.
 16 Comm'r of Soc. Sec., 276 F.3d 235, 241 (6th Cir. 2002) ("While a GAF
 17 score may be of considerable help to the ALJ in formulating the RFC,
 18 it is not essential to the RFC's accuracy. Thus, the ALJ's failure to
 19 reference the GAF score in the RFC, standing alone, does not make the
 20 RFC inaccurate."); Petree v. Astrue, 260 Fed. Appx. 33, 42 (10th Cir.
 21 2007) (Unpublished Disposition) ("[A] low GAF score does not alone
 22 determine disability, but is instead a piece of evidence to be
 23 considered with the rest of the record."); Ramos v. Barnhart,
 24 513 F. Supp. 2d 249, 261 (E.D. Pa. 2003) ("Clinicians use a GAF scale
 25 to identify an individuals' [sic] overall level of functioning, and a
 26 lower score 'may indicate problems that do not necessarily relate to
 27 the ability to hold a job.'" (citation omitted)).

28 //

1 Here, however, the ALJ did consider Dr. Salanga's GAF
 2 determination, noting it was "not entitled to significant weight"
 3 because "there is really no evidence to indicate the reliability of
 4 cross raters where one can conclude a particular GAF score means a
 5 particular limitation in work ability" despite "the DSM-IV gives some
 6 descriptions that can be followed in defining a GAF score. . . ."
 7 A.R. 18. This is a specific and legitimate reason for rejecting Dr.
 8 Salanga's GAF determination," Chavez v. Astrue, __ F. Supp. 2d __,
 9 2009 WL 5172857, *6 (C.D. Cal.); see also Borrie v. Astrue, 2009 WL
 10 2579497, *2 (C.D. Cal.) ("[T]he ALJ considered the GAF score, but
 11 finding such scores unreliable, did not find it mandated disability.
 12 This is a specific and legitimate reason for discounting the score.");
 13 Taylor v. Astrue, 2009 WL 4349553, *5 (C.D. Cal.) (same), "and since
 14 Dr. Salanga did not set forth any functional limitations or otherwise
 15 comment on plaintiff's ability to work, the ALJ did not err." Chavez,
 16 __ F. Supp. 2d at __, 2009 WL 5172857 at *6; see also Valentine, 574
 17 F.3d at 691 (no error when ALJ considered evidence claimant contends
 18 ALJ ignored).

19

20 **C. Dr. Goral:**

21 On May 29, 2007, Dr. Goral examined plaintiff and diagnosed her
 22 with "s[e]nsory hearing loss" in her left ear but no "[s]peech deficit
 23 due to [the] hearing loss[,]" and found plaintiff has 96% speech
 24 discrimination in her right ear and 92% speech discrimination in her
 25 left ear. A.R. 260-64. Dr. Goral opined no treatment was recommended
 26 for plaintiff, who "is not using hearing aids and none are necessary,
 27 but she may prefer to try one in the left ear in the future." A.R.
 28 261. Dr. Goral also opined plaintiff "can work in jobs requiring

1 acute hearing[,] . . . [and] needs to avoid jobs in which acute
 2 binaural hearing is necessary to avoid hazardous situations." Id.

3

4 The ALJ considered and adopted Dr. Goral's assessment, A.R. 13,
 5 finding plaintiff "cannot perform work that requires acute hearing
 6 such as noises and sounds." A.R. 11. Nevertheless, plaintiff
 7 contends the ALJ's RFC assessment is not supported by substantial
 8 evidence because the ALJ omitted the word "binaural" from his RFC
 9 assessment. This argument is specious. If anything, the ALJ's RFC
 10 assessment is more favorable to plaintiff than Dr. Goral's opinions.
 11 Moreover, the ALJ's RFC assessment of plaintiff's hearing limitation
 12 inferentially applies to both ears. Thus, there is no merit to this
 13 claim either. Valentine, 574 F.3d at 691.

14

15

III

16 The ALJ concluded plaintiff is able to perform her past relevant
 17 work as a telemarketer, based on plaintiff's RFC and the testimony of
 18 Vocational expert Troy Scott. However, plaintiff contends this Step
 19 Four determination is not supported by substantial evidence because
 20 the ALJ posed an incomplete hypothetical question to the vocational
 21 expert.

22

23 Hypothetical questions posed to a vocational expert must consider
 24 all of the claimant's limitations, Bray v. Astrue, 554 F.3d 1219, 1228
 25 (9th Cir. 2009); Thomas v. Barnhart, 278 F.3d 947, 956 (9th Cir.
 26 2002), and "[t]he ALJ's depiction of the claimant's disability must be
 27 accurate, detailed, and supported by the medical record." Tackett v.
 28 Apfel, 180 F.3d 1094, 1101 (9th Cir. 1999). Here, the ALJ asked the

1 vocational expert the following hypothetical question:

2
3 Assume a hypothetical individual the claimant's age,
4 education, prior work experience. Assume this person has no
5 . . . exertional limitations, no work [at] unprotected
6 heights, no work that requires acute hearing, and let me
7 further define that by saying acute hearing meaning very
8 light noises, very light sounds I should say. Normal
9 speaking pattern would be okay, would not be precluded. And
10 no, no fast[-]paced work such as piece work or conveyor
11 belt. Would such a hypothetical individual perform
12 claimant's past work [as a telemarketer]?

13
14 A.R. 41. The vocational expert responded "Yes." Id. However,
15 plaintiff contends the ALJ's hypothetical question was incomplete
16 because the ALJ did not include the limitations Drs. Chatsuthiphan,
17 Salanga and Goral found.

18
19 Plaintiff's argument is without merit for the reasons discussed
20 above. First, the ALJ's rejection of Dr. Chatsuthiphan's opinions is
21 supported by substantial evidence; thus, the ALJ did not need to
22 include Dr. Chatsuthiphan's limitations in his hypothetical question
23 to the vocational expert. Rollins, 261 F.3d at 857; Magallanes v.
24 Bowen, 881 F.2d 747, 756-57 (9th Cir. 1989). Second, Dr. Salanga did
25 not find any functional limitations on plaintiff's work abilities and,
26 in any event, the ALJ properly rejected Dr. Salanga's GAF score.
27 Valentine, 574 F.3d at 691; Chavez, __ F. Supp. 2d at __, 2009 WL
28 517857 at *6. Third, the ALJ properly considered and adopted

1 Dr. Goral's hearing limitations. See Roe v. Chater, 92 F.3d 672, 676
2 (8th Cir. 1996) ("While the hypothetical question must set forth all
3 the claimant's impairments, it need not use specific diagnostic or
4 symptomatic terms where other descriptive terms can adequately define
5 the claimant's impairments." (citation omitted)); Best v. Astrue, 580
6 F. Supp. 2d 975, 984 (C.D. Cal. 2008) (same). Therefore, the
7 hypothetical question to the vocational expert was complete and the
8 vocational expert's testimony constitutes substantial evidence to
9 support the ALJ's Step Four determination that plaintiff can perform
10 her past relevant work. Roberts, 66 F.3d at 184; Sanchez v. Sec. of
11 Health & Human Servs., 812 F.2d 509, 511 (9th Cir. 1987).

12

13

ORDER

14 IT IS ORDERED that: (1) plaintiff's request for relief is denied;
15 and (2) the Commissioner's decision is affirmed, and Judgment shall be
16 entered in favor of defendant.

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DATE: April 14, 2010

/S/ ROSALYN M. CHAPMAN
ROSALYN M. CHAPMAN
UNITED STATES MAGISTRATE JUDGE

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